

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 97-579**

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In Re: JAMES VASSELL,

Petitioner.

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On Petition for Writ of Mandamus. (CA-95-11-2)

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Submitted: March 10, 1998

Decided: June 18, 1998

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Before WILKINS, Circuit Judge, and BUTZNER and HALL, Senior Circuit Judges.

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Petition denied by unpublished per curiam opinion.

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James Vassell, Petitioner Pro Se.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

By this application for a writ of mandamus, James Vassell seeks an order of this court directing the district court to hear and decide his currently pending 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998) motion. The motion has been briefed since December 18, 1995, without resolution. Because of the nature of the action pending before the district court, this court ordered a response to Vassell's petition. A response was filed, see Fed. R. App. P. 21, and the matter is now ripe for adjudication.

While the district court does not explain the delay in resolving Vassell's petition, the court, in its response, made assurances that the motion would be acted upon before the end of May 1998. Thus, the district court contends that granting the petition for a writ of mandamus is unnecessary. We agree.

Mandamus is a drastic remedy and should only be granted in extraordinary situations. See In re Beard, 811 F.2d 818, 826 (4th Cir. 1987). Vassell must demonstrate that he has no other avenue for relief and that his right to relief is clear and indisputable. See Mallard v. United States Dist. Court, 490 U.S. 296, 309 (1989). In this case, Vassell fails to meet his burden, because the district court has clearly indicated that the motion will be resolved forthwith. The response of the district court demonstrates that Vassell has other avenues of relief available. Therefore, granting the petition for mandamus would be inappropriate, as the district

court's assurances accomplish substantially everything that this court would have directed.

Accordingly, we grant the motion for leave to proceed in forma pauperis and deny Vassell's petition for a writ of mandamus without prejudice. If Vassell encounters additional, significant delay, he may apply again for mandamus relief. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED